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6-24-2021

## Piracy and the Nigerian Copyright Law: A Re-Appraisal

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Afolayan, Oluyinka Titilope, "Piracy and the Nigerian Copyright Law: A Re-Appraisal" (2021). *Library Philosophy and Practice (e-journal)*. 5958.

<https://digitalcommons.unl.edu/libphilprac/5958>

## **1.0 Introduction**

Effective utilization of intellectual resources such as creative works, literary works, musical acts, dramatic works, published and unpublished print materials, media, and computer software amongst others play a significant role in a nation's development (Faga & Ole, 2011). On this account, copyrighted works are protected by the government through appropriate machinery by the enactment of laws due to the numerous benefits realized from intellectual resources such as promotion of wealth, poverty alleviation, generation of employment, and economic growth (Ezekude, 2012). Nigeria has benefited from the magnanimity of copyright-related products, for example in 2008, Copyright based industries contributed about N1.2 trillion to Nigeria's gross domestic income (Faga & Ole, 2011).

The Nigerian Copyright law, therefore, enforces and protects the rights of authors, creators, and their creative and intellectual products. Copyright law and practice in Nigeria is governed by the Copyright Acts of 1970 and 1988 and which were subsequently amended twice (Nigeria's Amended Copyright law of 1992; 1999). The Nigerian Copyright Act covers intellectual works such as literary works, musical works, artistic works, cinematograph works, sound recording, and broadcasts (Nigeria's Amended Copyright Law, 1992; 1999). It is divided into four parts and comprises forty-one sections in all. Part one of the act addresses issues such as eligibility for copyright protection, duration of copyright, civil and criminal penalties for copyright and infringement, and ownership of copyright. Part two of the act addresses neighboring rights, part three focuses on the administration of copyrights revolving around issues such as the establishment of the Nigerian Copyright Council, the appointment of the Director, and other staff of the council. And lastly, part four covers miscellaneous topics which include the reciprocal extension of protection, presumptions, and interpretations.

The Nigerian Copyright Act empowers the Nigerian Copyright Commission (NCC), the main regulatory and enforcement agency whose function is to regulate, enforce and protect the copyright of authors and creators. NCC's role in the protection of copyright as spelled out in the Nigerian copyright law is reflected in the ratification of various treaties among others such as the Paris Convention for the protection of industrial property (ratified in September 1963); Rome Convention for Performers, Producers of Phonograms and Broadcasting Organization (ratified

October 1963), the patent law treaty (ratified April 2005) and Patent Cooperation Treaty (ratified May 2005). Except that these treaties are hardly enforceable in Nigeria because it has not been domesticated (Faga & Ole, 2012). Apart from this, NCC has been mandated to bring the full weight of the law against infringers of copyright of authors and creators. Since the establishment of NCC in 1989 and following the implementation of Copyright decree NO. 47 of 1988, NCC's activities and programs have been tailored towards clamping down on piracy in the country. Local and International programs have been embarked upon which include Strategic Action Plan against Piracy (STRAP), Copyright Litigation and Mediation (CLAMP) in 2005, and several Programmes on copyright enforcement and anti-piracy activities. At the International level, collaborative efforts were made to establish strategic alliances with several development agencies and international organizations to widen the scope and effectiveness of its anti-piracy operations and awareness drive. These organizations include Swedish International Development Agency (SIDA), United Nations Educational, Scientific and Cultural Organization (UNESCO), African Regional Intellectual Property Organization (ARIPO), World Customs Organization (WCO) among others. The underlying motive for these synergic efforts was to reduce the increasing rate of piracy in the country and to provide an enabling and conducive environment for the growth of legitimate copyright industries in Nigeria (Ezekude, 2012).

Despite the role of the Nigerian copyright law, its ability to protect the right of authors and creators is being questioned due to cases of infringements on copyrighted intellectual properties such as literary works, musical acts, software among others. The reasons for this are not farfetched due to social and economic reasons which will be unveiled in the course of this paper. Copyright infringements occur when copyrighted works are reused by duplicating, photocopying, and repackaging for economic gains without seeking permission from the original authors and creators.

Due to technological advancement, especially in the use of Information and Communication Technologies (ICTs), copyright infringements have been growing rapidly and steadily especially in the content industries for products such as music, software, and video among others. Illegal activities such as digital duplication, unauthorized rental of video works, and online downloading among others are performed by infringers of the copyrighted works. These activities are referred

to as piracy as spelled out in the Copyright Acts. Piracy means the theft of intellectual properties of copyright holders through various unlawful ways by unknown individuals and organizations especially in the music, entertainment, and software industries (Osanyituyi, 2009). The increasing spate of piracy in the Nigerian environment was affirmed by the Director-General of the Nigerian Copyright Commission, Mr. Afam Ezekude pinpointed in one of his speeches that:

*“ the commission had seized pirated intellectual properties worth overN3 billion which had resulted into loss of economic gains and denial of rights to authors and creators of intellectual products and equally loss of government revenue from these legitimate products”.*(Ezekude, 2012)

The question that readily comes to mind is: Despite the efforts of the Nigerian government to eradicate piracy through her regulatory bodies and key stakeholders in the creative industries charged with the responsibility of protecting and enforcing copyright laws; why then is Nigeria still a dumping ground for pirated products and fertile land for pirate syndicates to operate?

In view of this, the focus of this paper is to unravel the reasons piracy thrives in the Nigerian environment in the face of a virile copyright law meant to protect the rights of copyright holders, punish infringers and defaulters of the law. The likely factors responsible for the high level of piracy in Nigeria will be given prominence in this paper, and suggestions on measures the government can adopt in ameliorating this deplorable situation before it ruins the economy of the nation.

## **2.0 Piracy of Intellectual Works in the Nigerian Environment**

Piracy dates back to 2000 years in Ancient Greece when sea robbers captured their ships and robbed them of treasured goods for their selfish ends. During that period, pirates were categorized into different types namely privateers, buccaneers, and corsairs. At that time, the Greece government prosecuted pirates by law and they may eventually be sentenced to jail or death sentences depending on the type of crime committed.

A layman's definition of piracy in the contemporary world refers to the sale of illegal items to make financial gains. Pirates tend to usurp authority and lay claim to the entitlements of others

for unjust reasons. Till today, Piracy is a lucrative business in the Nigerian environment due to financial gains that accrue from the sale of copyrighted works of authors and creators (Olaniyi, 2012). The illegality of piracy on intellectual works manifests in cases of duplication, printing, and copying other people's work without the prior knowledge of the rightful owner for their financial gains. In other words, piracy is the creation of duplicate and unauthenticated copies of copyrighted works such as print materials (published/unpublished) sound files, video files, films, movies, PC games, software among others (<http://www.ifpi.org>).

Due to technological advancement, the Piracy business has become sophisticated and global in nature and scope. The use of technological devices has aided pirates in the creation, production, and dissemination of these products (Omoba & Omoba, 2009). Even though piracy is an illegal business by the dictates of the law, the increasing rate of piracy in Nigeria and the world at large is quite alarming. In the Nigerian environment, the piracy business has diversified into various intellectual products such as musical works, video, software, and hardware utilities apart from print materials. On this account, the entertainment and software industries are losing so much to piracy; and this has hampered greatly the rapid growth of the creative industry (Ezekude, 2012). One then wonders the effectiveness of the Nigerian copyright law to punish offenders and infringers on authors' rights. Due to the influence of technology in today's business, piracy on copyrighted works involves activities such as photocopying, downloading, duplicating, transferring, disseminating, and distribution without prior permission from the copyright holders. The Nigerian environment, without being prejudiced has become a dumping ground for pirated products both from within and outside the country. Nigeria maintains the largest piracy market in the world in the products protected by Copyright Acts especially in the software and entertainment industries (Akinjide, 2007). Also, Nigeria's work of arts especially music and movies rank amongst the most abused and pirated products (Olaniyi, 2012). In essence, this shows that the Nigerian copyright law is weak and poorly enforced by the regulatory and enforcement agencies that are mandated by the Federal government to regulate and control piracy activities in the country.

## 2.1 Types of Piracy in the Contemporary Nigerian Environment

Intellectual products can be categorized based on the types of piracy entrenched in the Nigerian environment. In this contemporary time, piracy activities have shifted from print materials to more electronic products such as CD's DVD's, Software, Sound and Video recordings, Movies, Films, and so on due to ease in the use of technological devices such as computers, the internet, photocopying machines, scanners, and the likes in copying, duplicating, downloading copyrighted materials without prior permission from the copyright holders. These tools have facilitated quick production of the pirated copies of these products, thereby contravening copyright laws. The different categories of pirated products include the following:

**Audio Piracy:** This type of piracy majors on audio devices for recording sound and music such as MP3, MP4, and audio cassettes. Sound recordings and music of artists are downloaded and stored on these devices for commercial purposes.

**Video/Movie Piracy:** Live recordings and broadcast performances of actors and actresses are pirated by some film producers and recording companies because original movies are expensive and not affordable. These products are pirated for accessibility purposes and profit-making. (<http://www.thegeminigeek.com/>)

**Computer Piracy:** This type of piracy is relatively new but rapidly growing. Original computer products such as software applications, PC games, and hardware utilities are quite expensive due to heavy import duties collected on them. On this account, Pirated computer products are flooded into the market due to affordability and easy access to these products.

**Internet Piracy:** This form of piracy is also referred to as online piracy. It is the unauthorized use of music or other creative content on the internet for commercial and non-commercial purposes. Infringement on copyrights is through file sharing on a Peer to peer network (P2P), downloading from a website, and other means.

## 3.0 Factors Responsible for Commercialization of Intellectual Products

Commercialization of intellectual works by pirate syndicates in the Nigerian environment fondly referred to as the “underworld” has impacted negatively on the economy of the nation due to

their illegal activities such as denying copyright holders of their rights of ownership, reproduction, duplication, modification of copyrighted works for profitable sales. At the same time, the government is denied revenue due to taxes collected on these legitimate products. All these forms of infringements are committed by some ignorantly and others deliberately as proof that those copyrighted works are not effectively protected by the government and regulatory agencies.

Professor Uche Ewelukwa Ofodile of the University of Arkansas School of Law, United States identified six factors militating against effective Copyright protection in Nigeria which are lack of public wide consultation and awareness in making decisions about intellectual property laws, lack of public awareness, corruption, and weak enforcement, slow delay in the judicial proceedings which discourages intellectual litigations and enforcement (Oyesina 2010). Similarly, Ezekude (2012) attributed the high prevalence of piracy in Nigeria to some significant contributory factors such as scarcity and high cost of genuine products, high level of poverty in the country, poor distribution networks, slow judicial system, and inadequate funding of the regulatory agencies.

Another salient point contributing to a high level of piracy in the country is the lack of public participation in the promulgation of copyright laws. For instance, the Nigerian copyright Acts of 1988 was inaugurated at the height of Military rule; and therefore excluded the participation of the public and the stakeholders in the intellectual property system. This resulted in the promulgation of copyright laws that are alien to the Nigerian populace, therefore leading to diverse forms of infringements of copyright laws.

In addition, failure to enforce copyright laws by the law enforcement agencies such as the Nigeria Police Force (NPF) and the Nigeria Customs Service (NCS) is another contributory factor due to the high level of corruption amongst the officials. Corrupt officials fail to probe and arrest defaulters and infringers of copyright laws at the point of bringing pirated products into the country. This depicts that copyright laws are not adequately enforced for reasons of corruption and selfish gains on the part of the enforcement agencies.

The Non-availability and accessibility of intellectual products in the market is also one of the prevailing factors responsible for the high level of commercialization of intellectual works. Due to the high cost of production, intellectual products such as textbooks, musical works, films, movies, software, and so on are quite expensive, and so they are minimally available in the market and therefore cannot be easily accessed. Pirates take advantage of this anomaly and produced pirated copies of these scarce materials without seeking permission from the copyright holders.

Popular and best-selling products in the market are prone to be pirated due to high economic gains that accrue from the sale of such products. In the Nigerian environment, pirated copies of popular products of musicians and artists such as movies, films, and audio recordings in little or no time pervade the market due to reasons of non-availability and inaccessibility of their products. These pirated copies are sold for a lesser amount than the original products for quicker gain. Most Nigerians are lured into buying these products due to their cheapness, availability, and accessibility.

The high unemployment rate is also responsible for the high level of piracy in the country. Job seekers such as unemployed graduates and secondary school leavers tend to be lured into the piracy business to earn a living. In this case, intellectual works of authors and creators are reproduced and sold at a cheaper price than the original products to attract market demands of those pirated products. Due to the high level of unemployment, pirates tend to stay longer in this business due to weak enforcement of copyright laws and inadequate sanctions on infringers.

Furthermore, inadequate Sanctions also account for the high commercialization of pirated products in the country. Sanctions meted out to infringers concerning the law are not adequate. With respect to the Nigerian copyright law, the sanctions for infringers are not commensurate to the crime committed. For instance, collecting a fine of N100- N500 per copy on pirated products cannot effectively deter pirates from indulging in such illegal acts. Therefore, stiffer sanctions on infringers may serve as deterrents to the existing pirates and those that are yet to join the league of pirates.



Also, the use of Information Communication Technologies (ICTs) in reproducing, modifying, and transferring online materials is very common in the Nigerian environment. Technological devices and tools such as the internet, photocopiers, scanners, computer, and so on have facilitated the quick production of pirated products within the shortest time at a minimal cost. Infringements on copyrighted works due to activities such as photocopying, downloading online materials, distributing and transferring of files on compact disc, audio cassettes abound in the Nigerian market.

#### **4.0 Challenges of the Nigerian Copyrights Commission in Combating Piracy**

Copyright law and practice in Nigeria is governed by Copyright Acts of 1970 and 1988 and had subsequently been amended twice in 1992 and 1999 to meet the challenges of copyright innovations in the creative world. Unfortunately, Copyright Acts has not accorded adequate protection to digital inventions in the country (Faga 2012), thereby given room to infringements on digital products. In a bid to curbing piracy in the country, the Federal Government had adequately empowered the Nigerian Copyright Commission (NCC) and other regulatory agencies in enforcing, regulating, and implementing copyright laws.

In the past years, NCC had engaged in quite some anti-piracy operations in meeting up with the mandate granted by the Federal Government of Nigeria. NCC had partnered with other sister regulatory agencies such as Nigeria Police Force (NPF), Nigeria Customs Service, and Economic Financial Crimes Commission (EFCC) in ensuring that piracy activities are abated in the country. NCC had stepped up prosecution of copyright infringements and enforcement interventions beefed up. For instance, in 2011, NCC undertook twenty-six (26) anti-piracy raids, 145 culprits arrested, 6 million pirated products were seized including films and sound recordings (Ezekude, 2012),

Despite these milestone achievements recorded by the regulatory agencies, the piracy business had still not abated in the Nigerian environment due to several challenges that have been pinpointed in this paper. These challenges have been militating against the effectiveness of the NCC being the main regulatory body mandated by the Federal government to regulate and enforce copyright laws in Nigeria. The major challenge confronting regulatory agencies is the

enforcement of copyright policies on the populace. Enforcement had been a herculean task for regulatory agencies due to a lack of awareness and public enlightenment. For instance, the enforcement of the Federal Government's zero-tolerance policy on piracy activities in the country has not been successfully implemented due to the prevailing socio-economic challenges confronting the nation's economy. Copyright policies must be implemented vis-a-vis the people, that is, wide acceptability and public participation is a prerequisite for effective policy enforcement. Therefore, efficient enforcement of copyright laws is a critical element in enabling the future development of Nigeria's creative industries (Ezekude 2012).

## **5.0 Conclusion and Recommendations**

The role of the Nigerian Government in the eradication of piracy activities is very paramount in the adoption of specific measures that would ameliorate piracy activities and copyright infringements. The first measure centers on government addressing the numerous factors that undermine effective enforcement of copyright laws in the country such as corruption, lack of coordination among the enforcement agencies, lack of accountability, and lack of funds amongst others. These identified factors must be tackled urgently for the total eradication of piracy activities in the country.

Secondly, reorientation and enlightenment programs are essential to facilitate public awareness and participation. Lack of public awareness and education on copyright laws may be responsible for some forms of copyright infringements in the Nigerian environment. It is believed that intellectual protection is a western concept, therefore is not relevant to Africans ((Oyesina 2010).

Also, the imposition of stiffer sanctions by the regulatory agencies will serve as a deterrent to copyright infringers and the involvement in illegal piracy business. These sanctions could be in the form of serving jail sentences, a large sum of financial charges, and filing lawsuits in court against identified pirates (Banwo, 2009)

And lastly, the Federal government must enforce the policy of online registration for all intellectual works emanating from individuals and organizations in the country. Copyright holders must register their intellectual works online with the Nigerian Copyrights Commission in the following format of: Name of the author, Title of work, Year of Production and quantity of

work produced as spelt out in the Nigerian copyright law of 1970 and the amended copyright law of 1992 and 1999 respectively. NCC must maintain a centralized and comprehensive database of all copyrighted works produced by authors, creators, publishers, producers, and manufacturers of intellectual properties as a means of protecting and controlling the nation's intellectual properties.

In conclusion, since piracy is a growing and thriving business in the Nigerian environment, it is recommended that the government should promulgate piracy laws specifically to address piracy activities in the Nigerian environment especially the exporting and importing of intellectual and creative products into the country through her regulatory and law enforcement agencies.

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